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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 12, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN RIVERA, aka Juan Rivera
Cruz, Juan Cruz Rivera, Manuel
Rivera, and Camaron,

Defendant.

NO: 2:19-CR-87-RMP-1

ORDER TRANSFERRING
DEFENDANT'S SUCCESSIVE
MOTION UNDER 28 U.S.C. § 2255
TO VACATE, SET ASIDE, OR
CORRECT SENTENCE

BEFORE THE COURT, without oral argument, is Defendant Juan Rivera's

Successive Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct

Sentence. ECF No. 95. The Court has reviewed the motion, has considered the

record and relevant law, and is fully informed.

BACKGROUND

On March 15, 2022, Defendant filed his first Motion Under 28 U.S.C. § 2255.

ECF No. 87. That motion was denied on May 5, 2022. ECF No. 91. This Court

declined to issue a Certificate of Appealability, because "no reasonable jurist would

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1 find it debatable whether this Court is correct in denying Defendant's § 2255 motion
2 as untimely." ECF No. 91 at 9 (citing *Slack v. McDaniel*, 529 U.S. 473, 484
3 (2000)). On June 16, 2022, Defendant filed a Motion for Reconsideration, which
4 also was denied. *See* ECF Nos. 92 (Motion) and 93 (Order). Defendant filed the
5 present successive § 2255 motion on February 6, 2024. ECF No. 95.

6 **LEGAL STANDARD**

7 A federal prisoner in custody may file a motion under 28 U.S.C. § 2255 to
8 collaterally challenge his sentence on the grounds that it was imposed in violation of
9 the Constitution or laws of the United States, or that the Court lacked jurisdiction to
10 impose the sentence or that the sentence exceeded the maximum authorized by law.
11 28 U.S.C. § 2255. However, the Antiterrorism and Effective Death Penalty Act
12 "imposes significant limitations on the power of federal courts to award relief to
13 prisoners who file 'second or successive' habeas petitions." *United States v. Lopez*,
14 577 F.3d 1053, 1059 (9th Cir. 2009). "A petitioner is generally limited to one
15 motion under § 2255, and may not bring a 'second or successive motion' unless it
16 meets the exacting standards of 28 U.S.C. § 2255(h)." *United States v. Washington*,
17 653 F.3d 1057, 1059 (9th Cir. 2011). A motion under § 2255 is successive if it
18 raises claims that were adjudicated, or could have been adjudicated, on the merits in
19 a previous § 2255 motion. *See McNabb v. Yates*, 576 F.3d 1028, 1029 (9th Cir.
20 2009).

1 Pursuant to 28 U.S.C. § 2255(h),

2 [a] second or successive motion must be certified as provided in
3 section 2244 by a panel of the appropriate court of appeals to
4 contain—

5 (1) newly discovered evidence that, if proven and viewed in light of
6 the evidence as a whole, would be sufficient to establish by clear and
7 convincing evidence that no reasonable factfinder would have found
8 the movant guilty of the offense; or (2) a new rule of constitutional
9 law, made retroactive to cases on collateral review by the Supreme
10 Court, that was previously unavailable.

11 The statutory reference to 28 U.S.C. § 2244 refers to the requirement that
12 “[b]efore a second or successive application permitted by this section is filed in the
13 district court, the applicant shall move in the appropriate court of appeals for an
14 order authorizing the district court to consider the application.” 28 U.S.C. §
15 2244(b)(3)(A); *see also* Ninth Circuit Rule 22-3(a).

12 DISCUSSION

13 As previously noted, the Court already has considered and denied Defendant’s
14 first motion under 28 U.S.C. § 2255. ECF Nos. 87 and 91. Defendant’s successive
15 § 2255 motion is identical to his first § 2255 motion. *See* ECF Nos. 87 and 95.
16 Defendant does not demonstrate that the Ninth Circuit has authorized a successive §
17 2255 motion. Lacking that authorization from the appellate court, a district court
18 “lacks jurisdiction to consider the second or successive application.” *Lopez*, 577
19 F.3d at 1061. Therefore, this Court does not have jurisdiction to consider his
20 application for relief.

1 Ninth Circuit Rule 22-3(a) provides in part: “If an unauthorized second or
2 successive . . . section 2255 motion is submitted to the district court, the district
3 court may, in the interests of justice, refer it to the court of appeals.” *See also* 28
4 U.S.C. § 1631. The Court believes that it is in the interests of justice to transfer this
5 case to the Ninth Circuit. In general, the Ninth Circuit has taken a broad view of
6 when transfer is appropriate, recognizing that “[n]ormally transfer will be in the
7 interest of justice because normally dismissal of an action that could be brought
8 elsewhere is ‘time-consuming and justice-defeating.’” *Amity Rubberized Pen Co. v.*
9 *Mkt. Quest Grp. Inc.*, 793 F.3d 991, 996 (9th Cir. 2015) (citation omitted).

10 Transferring Defendant’s Motion would expedite a just result in his case.

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. Defendant’s Motion to Vacate Under 28 U.S.C. § 2255, **ECF No. 95**,
13 shall be terminated in this Court and **TRANSFERRED** to the Ninth Circuit Court of
14 Appeals for determination of whether his Motion should be authorized pursuant to
15 28 U.S.C. § 2255(h).

16 2. Defendant is advised that this transfer will not itself constitute
17 compliance with 28 U.S.C. § 2255 and Circuit Rule 22-3(a). Defendant must still
18 file an application for leave to proceed with the Ninth Circuit and make the showing
19 required by § 2255. The Clerk of the Court shall send Defendant a copy of the Ninth
20 Circuit **Form 12**.

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3. The corresponding civil file, 2:24-cv-43-RMP, shall be CLOSED.

IT IS SO ORDERED. The District Court Clerk is directed to enter this

Order, provide copies to counsel and *pro se* Defendant.

DATED February 12, 2024.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Senior United States District Judge